

sugar production for closing a sugar beet processing factory during the 1998 through 2000 crop years:

(iii) Increased 0.25 percent of the sum of all beet processors' weighted average sugar production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and

(iv) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years.

(b) Each sugarcane processor's, other than a new entrant's, allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's marketing allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section will not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products as long as such exports are not eligible to receive credits under reexport programs administered by the Foreign Agricultural Service for refined sugar or sugar-containing products;

(2) Any sugar marketings for nonhuman consumption, except for the

sale of sugar for the production of ethanol or other bioenergy under the Feedstock Flexibility program or the sale of sugar for the production of polyhydric alcohol under the Polyhydric Alcohol program administered by the Foreign Agricultural Service; and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales;

(i) Are made before May 1, and

(ii) Reported to CCC within 51 days of the date of sale.

(f) Paragraph (d) of this section also shall not apply to marketings of purchased sugar marketed in the crop year of the purchase, but does apply to marketings of sugar purchased as part of a transaction pursuant to paragraph (e)(3) of this section.

(g) Paragraph (d) of this section also will not apply to the marketing of beet sugar processed from purchased in-process beet sugar if the processor purchased the in-process beet sugar before October 1, 2008.

(h) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may only use cane sugar to fill such allocation.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39813, July 1, 2004. Redesignated and amended at 74 FR 15365, Apr. 6, 2009]

§ 1435.307 Transfer of allocation.

(a) If a sugarcane processing facility is sold or transferred to another owner or is closed as part of a corporate consolidation CCC will transfer the allotment allocation to the purchaser or successor.

(b) In proportionate share States, allocations, based on the number of acres of sugarcane base being transferred and the pro rata amount reflecting the grower's contribution to allocation of the processor for the sugarcane base being transferred, will be transferred between facilities if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,

(2) Written certification from the processor that will accept the additional sugarcane deliveries that its processing capacity will not be exceeded.

(3) CCC will only consider requests for transfer of allocation submitted during the month of May. The request must include the grower's sugar production history for crop years 1997 through 2003. The facility with the grower's history will be required to certify the history when requested by the grower, and

(4) Allocation transfers will be effective for the next fiscal year after the request is submitted to CCC, that is beginning October 1.

(c) If a sugar beet processing facility or a sugarcane processing facility located in a non-proportionate share State is closed, and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer their share of the allocation from the processor that closed the facility to their new processor. If CCC approves transfer of the allocations, it will distribute the closed facility's allocation based on the contribution of the growers' production history to the closed facility's allocation. CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processor that will accept the additional deliveries,

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers, and

(4) Determinations by the CCC will be made within 60 days after the filing of the petition.

(d) Subject to a transfer of allocation, if any, described in paragraph (c) of this section being completed, CCC will consider a processor to be permanently terminated and eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding,

(3) Has not processed sugarcane or sugar beets for 2 consecutive crop years,

(4) Has notified CCC that the processor has permanently terminated operations, or

(5) Has been determined by CCC to have permanently terminated operations.

(e) If a processor of beet sugar purchases all the assets of another processor, then CCC will immediately transfer allocation commensurate with the purchased facilities' production history, unless the allocation has already been transferred under paragraph (d) of this section.

(f) If a processor of beet sugar purchases some, but not all, of the assets of another processor, then CCC will assign a pro rata portion of the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount.

(1) The assignment of the allocation will apply to the crop year in which the sale occurs and for each subsequent year.

(2) The buyer of the facilities as specified in paragraph (e) of this section may fill the assigned allocation with production from other facilities it owns if the purchased facilities lack the production to fill the assigned allocation.

[74 FR 15366, Apr. 6, 2009]

§ 1435.308 New entrants.

(a) The Secretary may assign a new entrant sugarcane processor an allocation that provides a fair, efficient, and equitable distribution of allocations:

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year,

(2) CCC will consider any adverse effects of the allocation upon existing processors and producers,

(3) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing,

(4) A new entrant's allocation is limited to no more than 50,000 short tons, raw value, for the first crop year, and

(5) A new entrant will be provided, as determined by CCC: